THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Unadjusted rate per m^2 in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal allowed in part.

RE: Unit E, Umricam House, Bingley Road, Hoddesden, Hertfordshire EN11 0NX

APPEAL NUMBER: CHG100682134

BETWEEN:	Jetsie Ltd T/A Golden Boy Coaches	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr Ian Lonsdale	(Senior Member)
	Mr Simon Hooberman	
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 3:	28 February 2023	
PARTIES PRESENT:	Mr Michael Clayton of Altus	Appellant's representative
	Mr Lee Stevens	Respondent's representative

Summary of decision

1. Appeal allowed in part. The panel confirmed the Rateable Value (RV) of the appeal property as £57,500 based on a rate of £52.50/m^2 with a 2.5% end allowance with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the business rates payer of the appeal property at Unit E, Umricam House, Bingley Road, Hoddesden, Hertfordshire EN11 0NX.

3. The RV of the property was £60,000 with effect from 1 April 2017 and through the Check, Challenge, Appeal (CCA) process the appellant proposed that the base rate be reduced from £55/m^2 to £49/m^2.

4. Including the 2.5% end allowance for lack of heating, making the rate £47.78/m^2, this would reduce the RV to £53,500.

5. This was later revised to £50/m^2, less 2.5% making the rate £48.75/m^2, giving an RV of £54,500.

6. The property was a warehouse and premises with a gross internal area of 1,125.97m^2 and valued within the valuation office (VO) scheme 290614 applicable to Hoddesden industrial properties built between 1984 and 2000.

7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

8. Mr Michael Clayton appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

9. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

Issue

10. The issue in dispute was the RV of the appeal property.

Evidence and submissions

11. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the valuation officer's (VO) case decision notice, rental evidence and assessment summaries and the appellant's challenge submission.

12. Mr Clayton stated that the current unadjusted rate was over-assessed at £55/m^2, out of line with comparable properties and quantum had not been sufficiently reflected in the valuation.

13. The rental evidence on the appeal property was not helpful as it was a connected party arrangement and not open market. The rent was £90,720 per annum but was for pension fund purposes as Golden Boy Coaches own and occupy the building. No weight should be attached to it.

14. However, smaller assessments in the same valuation scheme had been reduced by the valuation officer (VO) from £65/m^2 to £58/m^2 and this should mean the appeal property, being larger, should also be reduced. One of these was Unit 7 Optima Business Park, a

much smaller building constructed in 2000 and so much more modern than the appeal property as the appeal property was built in 1985.

15. He also stated that the £50/m^2 rate was closely in line with the agreement for Unit 7 Charlton Mead Lane, almost identical in size to the appeal property and also constructed in the 1980's.

16. The properties offered by the VO at Francis works were much smaller than the appeal property and valued on a completely different quantum banding at £72.50/m^2 and were not, in his opinion, suitable comparators. The VO's evidence of Unit D Bingley Road was not useful as the rental agreement dated from March 2011, over four years before the valuation date.

17. He had submitted a summary of comparable assessments where the unadjusted rate had been reduced during the CCA process. The older properties built between 1974 to 1984 and of a similar size to the appeal property had been reduced to between £48.61/m^2 and £52.50/m^2. Many other more modern properties had also been reduced but they were valued considerably higher. He contended that there had been many changes made to similar assessments in the area and the tone of value had changed but this had not been applied to the appeal property.

18. The VO's representative stated that he had provided properties that were comparable to the appeal property and offered Global House, Geddings Road as the best comparator as the unadjusted rate had been reduced from £67.48/m^2 to £58.73/m^2 after a revision of the floor area.

19. He also offered that whilst the rental evidence for the property Unit D Bingley Road was four years before the AVD, it was still a good comparator as it was adjacent to the appeal property. As it was valued on a rate of £55/m^2 that was reasonable evidence to base the valuation of the appeal property at the same rate.

20. He did state that there was not a lot of good rental evidence available in the area and also that the general level of tone had fallen over the years.

Decision and reasons

21. The panel referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –"
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

22. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015.

23. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of this appeal, the material day is 1 April 2017.

24. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions giving clear guidance to be followed when assessing rateable value, namely:

(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.

25. The panel found that the rental evidence in respect of the appeal property was not useful in its valuation. It was clearly not an open market rent and could not be relied on. No weight was attached to it.

26. The panel found that the rental evidence in respect of Unit D Bingley Road was not useful as it was four years prior to the AVD. The panel attached little weight to it.

27. The panel found that it was clear that there had been many reassessments of the unadjusted rates of properties in the locality and where those properties were older, built

between 1974 and 1984 and of a similar size to the appeal property, the reductions were to values of between £48.61/m^2 to £52.50/m^2.

28. The appeal property was built just a year later and was therefore in a different valuation scheme, however, the panel found that it was not unreasonable to consider it to be more fittingly comparable with those properties.

29. The panel found that there had not been sufficient evidence presented to reduce the rate on the appeal property to the £50/m^2 as contended for by the appellant's representative but there was sufficient evidence to reduce the rate to £52.50/m^2. Further, that this would be in line with the summary of comparable assessments submitted.

30. The properties at Unit 5 Trident Industrial Estate and Unit 10 Pindar Road were good comparators and they had been reduced to £52.50/m^2 and the panel therefore found that an unadjusted rate of £52.50/m^2 was fair and reasonable for the appeal property.
31. Overall, the panel found that the appellant's case had not been completely proven but there was sufficient evidence to allow the appeal in part.

32. The panel found that the appeal property should be valued at the base rate of £52.50/m^2 with a 2.5% reduction for lack of heating giving a revised rate of £51.2/m^2 resulting in a rounded RV of £57,500.

Order

33. Under the provisions of regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the tribunal orders the valuation officer to alter the appeal property's entry in the rating list within two weeks of the date of this order to show a revised assessment of £57,500 RV with effect from 1 April 2017.

34. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the tribunal's decision. The refund will take around six weeks to process.

Date: 10 March 2023

Appeal number: CHG100682134

Rights of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.